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RETREAT FROM VICTORS' JUSTICE

by William Henry Chamberlin

It is remarkable how fast we are retreating, or attempting to retreat, from the consequences of a military victory so abused and so bungled that it has become a major national security risk. As the sixth anniversary of Yalta passes and the sixth anniversary of Potsdam approaches not a single achievement of these wartime conferences seems either durable or desirable.

What intelligent American today feels happy over the mutilation and abandonment of Poland, the giving of Manchuria to Stalin, the grotesque new Polish-German and Polish-Soviet frontiers, the uprooting of many millions from homes which their ancestors had occupied for generations, the total disarmament of Germany and Japan? Most of these decisions were crimes against elementary humanity; all were grave blunders from the cold-blooded standpoint of American national interest.

Now there has been a substantial and welcome, if belated retreat from the unsound conception of "victors' justice", to use the phrase of the British publicist, Montgomery Belgion, which found expression in the Nuremberg trial and in the many subsequent trials of alleged German war criminals by American courts.

High Commissioner John J. McCloy and General Thomas T. Handy, commander of United States forces in Europe, recently announced the completion of their review of 101 sentences imposed on prisoners held in the Landsberg prison. The revision of these sentences was so drastic as to throw considerable doubt on the justice of the original sentences. Twenty-one out of twenty-eight death penalties were commuted.

Thirty-three "criminals", including all the industrialists who had been sentenced in one of the flimsiest of the trials, were released. Mr. McCloy offered the comment that the confiscation of the property of Alfred Krupp was "generally repugnant to American concepts of justice" and reversed this sentence. Thirty-five prison terms were reduced.

It was natural that this decision should be met by outcries of enraged criticism by two groups in this country and abroad. There are those who want their pound of flesh of vengeance. And there are others who, because of active participation or expressed approval, have built

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up an emotional vested interest in vindicating the justice of the war crimes trials.

However, there seems no reason to question the sincerity of Mr. McCloy's statement:

"I have made every effort to decide each individual case objectively, dispassionately and on its merits. All of my decisions have been rooted in the firm belief in the basic principle of the rule of law which all must respect and to which all are answerable. With this principle I have striven to temper justice with mercy."

Indeed, one might well go farther and, in the retrospect of the years which have elapsed since the end of the war, say that the decision to set up victors' courts to try members of the vanquished nation for "war crimes" was a moral, judicial and political mistake and should never be repeated.

II

The most obvious objection to the war crimes trials, and it is one which a less intelligent and literate people than the Germans would scarcely have failed to appreciate, was the complete absence of two indispensable attributes of any genuine legal tribunal: impartiality and universality. The Germans were judged and condemned not because they had committed crimes of appalling character, as some of the defendants unquestionably had; but because they were defeated.

One could offer many concrete illustrations of this proposition; but two may suffice. The planning and waging of aggressive war was one of the principal items in the Nuremberg indictment. But it was widely known at the time, and has subsequently been proved by documentary evidence, that Stalin was a full-fledged partner in the first phase of Hitler's aggressive war, up to the point of concluding advance agreements as to how the human and territorial spoils of aggression in Eastern Europe should be shared. But representatives of the U.S.S.R. were not in the dock at Nuremberg; they sat on the bench with the other judges.

Few war crimes exceed in atrocity the cold-blooded massacre of thousands of Polish war prisoners whose bodies were discovered in 1943 in the Katyn Forest, near the town of Smolensk, in western Russia. The circumstantial evidence that this massacre was carried out by the Soviet political police in the spring of 1940 is overwhelming. The Nuremberg tribunal itself, certainly not inclined to give the Germans the benefit of any doubt, refused to find them guilty of this particular outrage, although it had been listed in the indictment. But no one proposed to

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call the Soviet authorities responsible for this violation of international law and elementary humanity to account.

And Count Stauffenberg, cousin of the officer who was one of the leaders of the plot against Hitler of July 20, 1944, voiced a not unnatural sentiment when he recently proposed the prosecution of "those Allied war criminals who were guilty of raping and plundering the German people when the Allies advanced into Germany."

III

It is this obvious absence of any attempt to apply even-handed justice in the punishment of offenses against humanity that explains the cynical apathy with which most Germans have reacted to the war crimes trials. Had a genuinely international tribunal, including judges selected from neutral countries and from non-Nazi Germans, been set up after the war for the purpose of investigating all offenses against humanity, the effect would have been impressive and edifying.

But a long series of trials of vanquished by victors could only be expected to produce among the vanquished at best indifference, in some cases sympathy with the accused. The inconsistency was too glaring, especially after the Cold War heated up and the Western powers and the Soviet Union began to accuse each other of the crime of preparing a new aggressive war.

Apart from this general inconsistency, there were grave objections in detail to the conduct of many of the war crimes trials and the assumptions on which these trials were based. In the trial of twelve members of the Krupp firm there was an avowed determination on the part of the prosecution to get "a Krupp", regardless of how little evidence there might be against him. As Alfred Krupp wrote to General Clay after his conviction:

"During the whole procedure I felt that I was standing before prejudiced and biased judges."

The counsel for the defendants, in their appeal, asserted that all the questions put by the judges aimed at implicating the accused, that no witness for the prosecution was cross-examined for credibility, whereas this method was applied to witnesses for the defense, that documents were misused and cited out of context. The court held the Krupp firm responsible for measures prescribed by the Nazi government for the treatment of foreign laborers and paid no attention to evidence that the firm did what it could to improve this treatment.

As in many other cases, notably in the trial of such former members of the Foreign Office staff as Weizsaecker and Woermann, there was a

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deliberate or unconscious ignoring of the psychological condition under which men lived and worked under Hitler's dictatorship. Long prison sentences were imposed not for acts of spontaneous cruelty and inhumanity, but because industrialists and diplomats did not file protests which would have been useless to the victims of the Nazis and self-destructive for themselves.

IV

Still more sinister were the methods used to extort confessions from German soldiers accused of having killed American prisoners in the Malmedy region of Belgium during the Battle of the Bulge. According to Judge Edward Van Roden of Pennsylvania, who investigated this case for the Army, physical torture and mock trials and threats to families of the accused were employed on such a scale that "it is impossible to know whether the men being hanged are guilty or innocent".

Senator McCarthy of Wisconsin, who denounced this perversion of the ideals of American justice on the floor of the Senate, suggested one of the explanations: "Many members of the interrogation team were American citizens of very recent origin -- German political refugees from Hitlerian Germany -- employed by the Army because of their hatred for the defendants for the purpose of getting confessions from the accused."

All in all, the purposes of justice and American political interests were badly served by the war crimes trials. High credit is due to a few men who spoke out against the abuses of these trials, to investigators like Judge Van Roden, to Judge Wennerstrum, who sharply disassociated himself from the spirit and methods of a trial of German generals, to Judge Powers, who presented a powerful dissenting argument in the case of the Foreign Office officials.

A German of outstanding political intelligence, with whom I discussed the recent revision of sentences, predicted that this would lead to better understanding and added:

"There is nothing to be said personally in favor of the seven men whose death sentences were upheld. They were proved mass murderers. The only argument for commutation in these cases is that the death penalty has been abolished in the German Federal Republic. I think there is a case for further modifications of the sentences passed on some of the generals. They have been condemned for dealing harshly with guerrillas; but your own experience in Korea shows that guerrillas cannot be handled with silk gloves."

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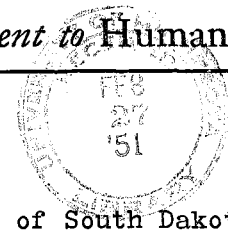

By Frank C. Hanighen February 21, 1951

BLUEPRINT FOR COALITION: Senator Karl Mundt of South Dakota may prove to be its principal architect, if the structure of an alliance between Northern Republicans and Southern Democrats is really to be created. In a sensational speech, sensationally un-reported, Mundt urged such a coalition before -- of all places -- the Union League Club of New York City on February 14. We learn that the reaction of the audience was highly favorable. But such advocacy is not new; a number of Republicans have urged such a merger. Mundt, however, is the first to offer a really concrete proposal for an idea which has been hailed by others in principle. These are the outlines of the Mundt Plan:

(1) The GOP should hold its nominating convention after the Democratic convention in 1952. In years past, the Republicans have held their meeting first. In 1948, the nomination of Thomas E. Dewey, highly unpopular in the South, preceded the Democratic convention. And when the latter took place with not a few highly emotional scenes, the Southerners could only swallow their rage, or join with the so-called Dixiecrat Party.

(2) In the Democratic Convention of 1952, Mundt argues, either President Truman will repeat his performance of 1948 (with somewhat the same Southern disapproval), or the Leftists in the Party will replace him with their candidate. In either case, the Southerners would be highly discontented.

(3) But, with the GOP convention still to be held, and the spirit of the coalition abroad, the Southerners, instead of setting up a futile splinter party, should send a delegation to the opening of the GOP convention. This group would submit a panel of candidates (Mundt suggests the following four: Taft, Eisenhower, Senator Russell of Georgia, Senator Byrd of Virginia), from which the Republicans would be invited to select the ticket of President and Vice President. In making the choice, the Republicans would seek to pick those most acceptable to the South; and in the platform, the Republicans would presumably omit any planks, such as the FEPC, which would be repugnant to the South. The GOP convention would nominate the ticket and the Southerners would return to the South to set up conventions of their own for nomination of the same ticket. Their ticket would either be labelled "Democratic", where the old Democratic machinery could be captured, or would bear some other name. Should the coalition win, electoral votes for it from the South would be merged in the electoral college with Republican votes.

After victory, the new party would take control of the Executive and Congress. In the legislative body, chairmanships would be retained by members from those states which voted the new ticket, on the basis of seniority. A few months later, a convention would be held by the leaders of the coalition to decide on the name of the new party (Mundt suggests "Freedom Party"), and to organize on that basis for the future. These last two points have been the subject of considerable discussion and study and are intended to meet objections to the workability of coalition, on the score of "practical politics".

It is too early to appraise the response of the country to this proposal of Senator Mundt. But ground-work has been laid for serious thinking, not only about the principle of a coalition, but also about ways and means. Mundt performed some of these labors during a recent speaking tour in the South. And on December 1 and 2, 1950, the National Conference of Small Business Organizations (with headquarters

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in Chicago) held a meeting in Jackson, Mississippi, which appealed to "all Republicans and old-line Democrats" to form such a coalition. A "National Coalition Committee" was appointed at the Jackson meeting to advance the program. It remains to be seen what progress will ensue. But, at least the Mundt proposal exists as the first real blueprint of an alliance.

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LABOR REACHES FOR TOP ECONOMIC CONTROL: Furious attacks from labor sources on Defense Mobilizer Wilson over manpower policy and wage controls have brought Mr. Truman to the forks of the road in his troublesome political tie with Big Labor. They are in open rebellion against what they call "Big Management" control in arms-making. Mr. Truman must either surrender to them, and give them the decisive voice that they demand, or risk a break as definite as exists between himself and John L. Lewis. The unionists withdrew from the Wage Stabilization Board in protest against action setting up a 10 per cent wage ceiling as a control formula, with later cost-of-living adjustments allowable. The resentment is primarily against Wilson, and is a culmination of various factors, rather than a specific objection to the wage ceiling.

Wilson holds that without wage controls and ceilings, impartially and effectively administered, price controls will be a farce, and the whole structure come crashing down. But the unionists are well aware that the tightest commodity in the rearmament effort is manpower, and in opposition to Wilson's position, they demand the top voice in his agency in determining wage policy, manpower control and, in effect, the implementation of the rearmament effort. They want a voice, or the decisive voice, in all top levels of economic and mobilization control. Wilson's view is that WSB cannot function if it exists only "to rubber-stamp hunting licenses for a higher, more inflationary sixth round of wage increases".

Mr. Truman is confronted with a real threat of political reprisals; already it has been made known to him by labor spokesmen that if he runs in 1952, they will keep hands off. They have told him that the price of "unity" is that they shall sit at the top levels of policy-making, including a role in the Army's relation with industrial manpower. It is a serious labor crisis, with nothing like it in recent years. Labor's break with Truman is complete unless he retreats.

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RIDERS: Mr. Truman's repugnance for "riders" in appropriation bills will be severely tried this year. A series of "riders", covering some of the most disputed issues between the President and Congress, are being made ready to insert in money-spending bills as they come up in the Senate. One such "rider" in preparation, it is reported, would withhold funds from departments and agencies which refuse to open loyalty and personnel files to the Internal Security sub-Committee of the Senate Judiciary Committee. The intent would be to put an end to departments and agencies flouting Congressional committees desirous of information relative to Communists in government service, or in such controversies as the Amerasia case. The contest between Mr. Truman and Congress will probably be bitter and long drawn-out.

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OPS AND OPA: The OPA is dead, long live the OPS. One may perceive nuances of difference between the titles of Office of Price Administration (d. in 1946) and the Office of Price Stabilization (b. in 1951); but actually they are father and son; like father, like son. Those (businessmen, farmers and workers) about to suffer from OPS ministrations, should salute their lords and managers -- who, it is interesting to note, are in large part the same individuals as in the period 1943-6.

Not to be sure, Prentiss Brown, nor Leon Henderson, nor Paul Porter, who fought and bled as Administrators -- and are wisely absent from the new show. No, we mean the men who are running Mr. DiSalle -- the middle bureaucrats, who in fact run everything. Those who visit the quarters of the OPS today note old familiar faces, not seen around these parts for the past five years. It is almost as if a tocsin had been sounded; for many of the ci-devant planners are streaming back into OPS

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offices from Wall Street law firms, university jobs and fellowships (paid for, doubtless, by some philanthropic ranchers who will soon be enraged by "ceilings on the hoof"); and also from other Government offices -- on "loan" -- from Commerce, or Budget, or Interior, etc. Even some of the former stenographers of the OPA have returned. It is estimated that about half the present top personnel of the OPS served the OPA.

For instance, there is Ed L. Phelps (formerly of OPA), now the Assistant Director of OPS; and Griffiths Johnson (formerly of OPA), now an economist and assistant to DiSalle. Then there is Joseph Kallick (OPA emeritus), now in the OPS; and H. E. Sanford, in charge of the cereals and feeds division of OPA, now the same in OPS; and Sidney Shreiro (OPA) now in OPS as well as Ben Caplan (OPA) now OPS. And on loan from the Budget Bureau, Jefferson Burroughs; and OPA-er James F. Brownlee, now a consultant for OPS, and Henry Hart of Yale, also here consulting. Finally the Counsel for Mr. DiSalle is Harold Leventhal, risen from the ashes of the organization that brought the debacle of 1946. In short, if you didn't like OPA, be prepared to not like OPS; or vice versa.

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FORD FOUNDATION: Last week, while reading the proofs of Bertrand de Jouvenel's supplement, we were struck by his proposal that the Ford Foundation should help enterprising wage-earners in Europe who lack venture capital to go in business for themselves; and that the project be tried out in some minor territorial unit of France or Italy. M. de Jouvenel remarked on how such a project -- to "help start others on careers of individual responsibility" -- would be most appropriate in view of the great tradition of Henry Ford, Sr. and his family. We reflected on how much better the Ford Foundation could use its money than some other institutions we have in mind whose directors authorize projects hardly conceived in this fine old spirit and executed by fellow travellers or worse. We envisioned a brilliant future for the Ford Foundation.

And then, turning to the Congressional Record (February 8) we followed a debate in the Senate, in which Senators discussed the conviction of Remington, the defects of the Loyalty Board and generally how subversives appeared in all sorts of unexpected places. Senator Malone was speaking (page 1189): "If the Senator will yield further, I should like to ask whether he is familiar with the work of Mr. Gladieux who, I believe, was Assistant to the Secretary of Commerce, and whether he knows where Mr. Gladieux is now? . . . Mr. Gladieux resigned, because there was a direct connection with Communists, apparently; at least we thought there was, and we are still working on it -- and he is now with the Ford Foundation, I am informed." And on the next page, 1190, we found Senator Brewster speaking on the same subject: "We know Lee's record; we know Remington's record. He is a convicted felon. We know the record of Gladieux, who was [sic] connected with the Ford Foundation. . . . Mr. Malone: The junior Senator from Nevada pointed out that Mr. Gladieux was Assistant to the Assistant Secretary of Commerce, and presumably, though there is no valid proof, because the evidence had not reached the Secretary, according to his statement, it was assumed by everyone that Mr. Gladieux was involved. He claimed to be innocent of the whole thing. Mr. Whitney [Cornelius Vanderbilt Whitney, former Under-Secretary of Commerce], if he were so inclined, could blow the lid off a great many of these things."

So, in view of the great tradition which the Ford Foundation should uphold, we hope that Senator Malone is in error, that Mr. Gladieux is as innocent as he said, and that if the matter isn't cleared up, the Foundation will consult Mr. Whitney.

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HINDSIGHT: The word "hindsight" comes readily -- and inevitably -- from the apologists of our foreign policy of the last fifteen years. When a political Administration errs gravely in its acts, what course is more obvious than to accuse its critics of being wise after the event? Unfortunately for the State Department spokes-

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men, a number of members of Congress can produce their own prophetic speeches in re the Marshall Plan, or the Administration policy in China as an effective answer. Yet the cases of ECA and China are comparatively recent items in the long record of blunder. How about earlier, more fundamental mistakes -- such as our affectionate embrace of the Russian bear in 1941 and following years?

There is, in fact, a splendid handbook which offers rich documentation -- although the editor of the volume hardly anticipated such a use for his labors. The editor was none other than Mr. Rex Stout, now returned to the more grateful pursuit of "whodunit" fiction, but a decade ago one of the great proponents of a crusade against Hitler and a love affair with Stalin. The book was entitled The Magnificent Dunderheads, published in 1942 at a time when so-called isolationists were even more fair game than now, and any member of Congress who tried to talk sense to the public became per se an object of hate and ridicule.

Anyway, for The Magnificent Dunderheads, Mr. Stout provided a preface by Frank Sullivan who was -- may still be -- a professional funnyman. In his prefatory remarks, Sullivan was alternately righteously angry and satirical at the "Dunderheads". Quoth Sullivan: "The book is a collection of some of the silliest, stupidest and most dangerous statements that have been made by men laying claim to being leaders of the American people." We would like to see the pans of Stout and Sullivan as they now read some of the "dangerous" statements from The Magnificent Dunderheads:

First,let us lead with Congressman Hamilton Fish -- one of the major butts of this pair of elves. On August 5, 1941, he was guilty of the following: "I think the best thing that could happen on the vast steppes of Russia would be to have the Nazis and Communists continue to fight it out and destroy each other." Oddly enough, a certain Senator Truman from Missouri said much the same thing about the same time. But he is not quoted in the book.

Next, there was Representative John Vorys of Ohio who (on April 17, 1941, Congressional Record, page 4170) said: "We know that peace is not made wisely in the flush of victory. For this reason we do not want to see the peace dominated by a triumphant Germany, or Russia, or Japan, or Britain. We can make peace better now when there is no victor. . . ." Simply killing, isn't it?

As for Senator Bennett Champ Clark, he dundered thus, on June 24, 1941: "Once we have crawled in bed with 'Bloody Joe' no restraints are possible on the spread of Communist propaganda in this country. What profit is it to a God-fearing people to gain dominion over the earth in union with Communism and lose our own souls? Why should American money, made by the toil and sweat of her taxpayers, be poured out to protect Russia?"

Then there was Representative Frederick Smith from Ohio who declared: "In defending Russia, the President is forcing our Nation to defend Communism and everything that this hellish cult has done since it started in Russia 24 years ago. . . ." (Congressional Record, June 28, 1941, page 5787.)

And Representative Mason, from Illinois said: "One of these days the policy of collaboration with the totalitarian tyrant in Moscow is going to be revealed as one of the tragic mistakes of the era. . . ." (Congressional Record, September 25, 1941, page 7741.) We note similar sentiments from Senator Wheeler, Congressmen Stratton, Robsion, James O'Connor, Jonkman, etc., etc.

Now, these ideas may still seem perfectly preposterous to Mr. Stout. But since those quoted who are still in Congress continue to say much the same things, one fact is certain -- they are not guilty of "hindsight".

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